

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DEBORAH MOORE,

Plaintiff(s),

vs.

JONATHAN BIENIEK, LATHAM POOLS
PRODUCTS, INC., RYDER TRANSPOR-
TATION SERVICES, and RYDER TRUCK
RENTAL & LEASING,

Defendants.

Cause No: 4:21-cv-727

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

COMES NOW Defendant JONATHAN BIENIEK by and through counsel and for his Notice of Removal requesting removal of the Plaintiff's cause of action to this Court from the Circuit Court of St. Louis County, State of Missouri pursuant to Sections 1332 and 1441(a) of the United States Code states as follows:

1. Plaintiff commenced her action in the Circuit Court of St. Louis County, Missouri, on or about November 10, 2020, which was assigned Cause Number 20SL-CC05609.
2. Copies of all pleadings filed to date in the underlying cause are attached hereto as Exhibit A, and a copy of the state court's docket is attached as Exhibit B.
3. Defendant hereby requests the removal of said action to the United States District Court for the Eastern District of Missouri, Eastern Division, based upon the existence of diversity of citizenship between Plaintiff and Defendants pursuant to the diversity jurisdiction of this Court and 28 U.S.C. Section 1332(a)(1).

4. The United States District Court for the Eastern District of Missouri, Eastern Division, is the federal district court embracing St. Louis County, Missouri, where the plaintiff's action is currently pending.

5. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1), and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. Section 1441(a), in that:

- a. Plaintiff was a citizen and resident of the State of Missouri at the time of the occurrence described in the Plaintiff's Petition and continues to be and remains a resident of the State of Missouri up to and including the present times. (Exhibit A p. 2 ¶ 1.),
- b. Defendant Latham Pool Products, Inc. was, at the time of commencement of this action, and still is, a corporation incorporated under the laws of the State of Delaware with its principal place of business in Latham, New York, not in Missouri. (Exhibit A p. 2 ¶ 3.)(See Missouri Secretary of State records, attached as Exhibit C.)
- c. Although Plaintiff alleged that "Ryder Transportation Services" is a corporation incorporated in the State of Missouri, (Exhibit A p. 2 ¶ 4.), Ryder Transportation Services is an expired fictitious business name for Ryder Truck Rental, Inc. and Ryder Truck Rental, Inc. was, at the time of commencement of this action, and still is, a corporation incorporated under the laws of the State of Florida with its principal place of business in Miami, Florida, not in Missouri. (See Missouri Secretary of State records, attached as Exhibit D.)

- d. Plaintiff also alleged that Ryder Truck Rental & Leasing is a corporation incorporated in the State of Missouri. (Exhibit A p. 2 ¶ 5.) Plaintiff has not named as a defendant any particular corporation that includes the word “corporation”, “company”, “incorporated”, or “limited” in the name (or an abbreviation of the same). RSMo. § 351.110(1). No business organization with this name is registered with the Missouri Secretary of State. (See Missouri Secretary of State records, attached as Exhibit E.)
- e. Defendant Jonathan Bieniek is a citizen and resident of the State of Illinois at the time of the occurrence described in the Plaintiff’s Petition and continues to be and remains a resident of the State of Illinois up to and including the present times. (Exhibit A p. 2 ¶ 2.)
- f. Plaintiff seeks damages in excess of \$75,000.00 in that:
 - (1) Plaintiff has reported in the course of written discovery that she sustained physical injuries to her head, neck, low back, right arm, and right hand and that her medical bills for treatment related to this accident total \$352,651.29 (Answers to Interrogatories, attached as Exhibit F);
 - (2) Plaintiff made a settlement demand for Defendants’ policy limit. (Letter from Plaintiff’s Counsel, attached as Exhibit G); and
 - (3) Defendants’ applicable auto liability policy limit exceeds \$75,000.00.
- 6. Defendant Bieniek was not properly served until May 21, 2021. (Email & Letter, attached Exhibit H.)

7. The 30-day period for removal under 42 U.S.C. § 1446(b) does not begin to run until a defendant is properly served. *Murphy Bros. Inc v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999). Thus, this removal is timely.

8. The Co-Defendants to this action represented to counsel for Mr. Bieniek that they consent to this removal as required by 28 U.S.C. § 1446(b)(2)(A).

WHEREFORE, Defendant JONATHAN BIENIEK respectfully requests this Court to remove Plaintiff's cause of action to the United States District Court for the Eastern District of Missouri.

Respectfully submitted,

BRINKER & DOYEN, LLP

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was filed via the court's electronic filing system on the 19th day of June, 2021 with notice of case activity to be generated and served electronically by the court upon all counsel of records, and a copy was sent by email to all counsel, as follows:

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